

SECTION 11
**CHANGES AND AMENDMENTS TO ALL ZONING ORDINANCES
AND DISTRICTS AND ADMINISTRATIVE PROCEDURES**

11.01 AUTHORITY TO AMEND ORDINANCE (Z2000-0062):

The City Council may from time to time, after receiving a final report thereon by the Planning and Zoning Commission and after public hearings required by law, amend, supplement, or change the regulations herein provided or the boundaries of the zoning districts specified on the Zoning Map. Any Zoning Ordinance regulations may be ordered for consideration by the Planning and Zoning Commission or City Council. Any Zoning District boundary amendment may be ordered for consideration by the:

1. City Council;
2. Planning and Zoning Commission; or
3. The owner of the real property (or the authorized representative of an owner of real property)

In no case shall the City Council act upon any zoning request prior to recommendation by the Planning and Zoning Commission.

Each applicant for zoning or for an amendment or change to the existing provisions of this Zoning Ordinance shall submit a zoning application (available from the Planning Department) to the Planning Department on or before a scheduled submission date and shall be accompanied by payment of the appropriate fee as established by the City of Frisco, Texas. All applications received on a date other than an official submittal date shall be dated received on the next official submittal date. Applications must be complete for acceptance.

Consideration for a change in any district boundary line or special zoning regulation may be initiated only with written consent of the property owner, or by the Planning and Zoning Commission or City Council on its own motion when it finds that public benefit will be derived from consideration of such matter. In the event the ownership stated on an application and that shown on the City records are different, the applicant shall submit written proof of ownership.

Zoning Application Details

To ensure the submission of adequate information, the Planning staff is hereby empowered to maintain and distribute a list of specific requirements for zoning applications. Upon periodic review, the Planning staff shall have the authority to update such requirements for zoning application details.

11.02 PUBLIC HEARING AND NOTICE:

Zoning Changes

Prior to making its report to the City Council, the Planning and Zoning Commission shall hold at least one public hearing on each application. Before the tenth day before the hearing date before the Planning and Zoning Commission, written notice of each public hearing before the Planning and Zoning Commission on a proposed change in a zoning classification shall be sent to each owner, as indicated by the most recently approved Municipal Tax Roll, of property within two hundred feet (200') of the property in which the change in classification is proposed. The notice may be served by its deposit in the municipality, property addressed with postage paid, in the United States mail. Notice of City Council hearing shall be given by publication in the official newspaper of the City, stating the time and place of such hearing, a minimum of fifteen (15) days prior to the date of the public hearing.

Text Amendments

Notice of hearings on proposed changes in the text of the Zoning Ordinance shall be accomplished by one publication not less than fifteen (15) days prior to both the Planning and Zoning Commission and City Council meetings thereto in the official newspaper of the City. Changes in the ordinance text that do not change zoning district boundaries do not require written notification to individual property owners.

11.03 FAILURE TO APPEAR:

The Planning and Zoning Commission may deny a zoning application if the applicant or representative fail to appear at one (1) or more hearings before the Planning and Zoning Commission.

11.04 COMMISSION CONSIDERATION AND REPORT:

The Planning and Zoning Commission, after the public hearing is closed, may vote to approve, approve with amendments and conditions, table, or deny in whole or in part the application. The Planning and Zoning Commission may table for not more than ninety (90) days from the time it is posted on the agenda until it has had opportunity to consider other proposed changes which may have a direct bearing thereon. Should the applicant wish to submit a request to table prior to the public hearing, the request shall be submitted in writing to the Planning Department a minimum of seven (7) days prior to the meeting. In making their determination, the Planning and Zoning Commission shall consider, among other things, the following factors:

1. Whether the uses permitted by the proposed change will be appropriate in the

immediate area concerned and their relationship to the general area and the City as a whole.

2. Whether the proposed change is in accord with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other utilities to the area, and shall note the findings.
3. The amount of vacant land currently classified for similar development in the vicinity and elsewhere in the City, and any special circumstances that may make a substantial part of such vacant land unavailable for development.
4. The recent rate at which land is being developed in the same zoning classification as the request, particularly in the vicinity of the proposed change.
5. How other areas designated for similar development will be, or are unlikely to be, affected if the proposed amendment is approved, and whether such designation for other areas should be modified also.
6. Any other factors which will substantially affect the health, safety, morals, or general welfare.

If the Planning and Zoning Commission denies the zoning request, it may offer reasons to the applicant for the denial.

Proposal Recommended for Denial by the Commission (ZA2002-0022)

When the Planning & Zoning Commission determines that a proposal should be denied, it shall so report and recommend to the City Council and Planning staff shall notify the applicant. If the proposal is denied by the Commission, the request shall not be forwarded to the City Council unless the applicant requests an appeal to the City Council or the request is sent for review by the Commission by simple majority vote. Upon denial of a request by the Planning & Zoning Commission, the applicant may, upon his own motion within fourteen (14) calendar days, file with the Planning Department a written request that a public hearing be scheduled and held before the City Council regarding the application. The applicant shall be responsible for the costs of renotification, including postage. When a proposed zoning request is heard by the City Council that has been denied by the Planning & Zoning Commission, a vote of three-fourths (3/4) of the Council Members present, or four (4) votes, whichever is greater is required to overrule a recommendation of the Commission that a proposed zoning amendment, supplement, or change be denied.

11.05 CITY COUNCIL CONSIDERATION

- A. **Proposal Recommended for Approval by the Commission:** Every proposal which is recommended favorable by the Planning and Zoning Commission shall be automatically forwarded to the City Council for setting and holding of public hearing thereon. No change, however, shall become effective until after the

adoption of an ordinance for same and its publication as required by law.

- B. **City Council Consideration and Action:** City Council, after the public hearing is closed, may vote to approve, approve with amendments and conditions, table, or deny in whole or in part the application. Should the applicant wish to submit a request to table, the request shall be submitted in writing to the Planning Department a minimum of seven (7) days prior to the meeting.
- C. **Three-Fourths Vote:** If a protest against a proposed amendment, supplement or change to a zoning regulation or boundary has been filed with the Planning Department, duly signed and acknowledged by the owners of twenty percent (20%) or more, either of the area of the lots or land included in such a proposed change to a zoning regulation or boundary or the area of the lots, or land, immediately adjoining the area thereof extending two hundred feet (200') therefrom or of those directly opposite thereto extending two hundred feet (200') from the street frontage of such opposite lots, such amendments shall not become effective except by the affirmative vote of three-fourths (3/4) of all members of the City Council.
- D. **Denial by City Council:** The City Council may deny any request with prejudice. If a request has been denied with prejudice, the same or similar request may not be resubmitted to the City for six (6) months from the original date of denial.
- E. **Final Approval and Ordinance Adoption:** Approval of any zoning change, amendment, or supplement by the City Council at the scheduled public hearing shall constitute instruction to City staff to prepare the appropriate ordinance for final formal passage at a subsequent time. If finally approved by the required number of votes, the ordinance shall be executed by the Mayor.

11.06 BOARD OF ADJUSTMENT

A. Establishment of the Board of Adjustment

1. There is hereby created the Frisco Board of Adjustment (the "Board") and the Board may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the City of Frisco Comprehensive Zoning Ordinance that are consistent with the general purposes and intent of said ordinance and in accordance with any applicable rules contained in this ordinance or in rules and regulations adopted by the Board and approved by the City Council of the City of Frisco (the "City Council"). All rules and regulations adopted by the Board shall be reviewed and approved by the City Council. The rules and regulations shall be consistent with and not in conflict with this ordinance or other rules and regulations prescribed by the City Council. The Board shall function

according to the laws of the State of Texas, the Charter of the City of Frisco, Texas, and the provisions of this Ordinance.

2. The Board shall consist of five (5) members, to be appointed by the City Council for a term of two (2) years; provided, however, that of the first five (5) appointments made under this Ordinance, three (3) shall be appointed to serve a two (2) year term and two (2) shall be appointed to serve a one (1) year term; and, thereafter, three (3) shall be appointed during even-numbered years and two (2) shall be appointed during odd-numbered years, for said two (2) year term. The initial terms of the Board shall commence to run from January 7, 1992. No Board Member shall serve for more than three (3) consecutive terms or six (6) consecutive years (whichever is less).
3. When vacancies occur on the Board, the City Council shall appoint, by majority vote, a replacement to serve the remainder of that term.
4. Each Board Member may be removed by the City Council for cause on a written charge after a public hearing. Any Board Member who is absent from three (3) consecutive regular meetings without explanation acceptable to a majority of the other Board Members is good cause for removal.
5. Each Board Member shall serve without compensation, but may be reimbursed for actual expenses approved in advance by the City Council.
6. The Board shall keep and maintain minutes of any and all proceedings held and shall submit a written report of such proceedings to the City Council not more than three (3) weeks following each such meeting.
7. Each case before the Board must be heard by at least four (4) members.
8. The Board shall have three (3) alternate Board Members appointed by the City Council to serve in the absence of one (1) or more regular Board Members when requested to do so by the Mayor or City Manager. Each alternate Board Member serves for the same period as a regular Board Member and is subject to removal in the same manner as a regular Board Member. A vacancy among the alternate Board Members is filled in the same manner as a vacancy among the regular Board Members. An alternate Board member serves upon the same terms and conditions as a regular Board Member.

B. Officers

1. The Board shall have a Chair, Vice-Chair and Secretary whose terms shall be one (1) year. The Chair, Vice-Chair and Secretary shall be elected by the

members of the Board.

2. The Chairperson shall preside over meetings and shall be entitled to vote upon each issue. In the event a question over procedure rises, Robert's Rules of Order shall prevail.
3. The Vice-Chair shall assist the Chair in directing the affairs of the Board. In the absence of the Chair, the Vice-Chair shall assume all duties of the Chair.
4. The Secretary shall keep the Minutes of all meetings, and in the Secretary's absence, the Chair shall designate another member to act as Secretary. The Secretary may accept the assistance of City personnel in taking and transcribing minutes.

C. By-laws

The Board shall have the power to develop and revise by-laws for its own governance, which shall be subject to approval by the City Council. The by-laws shall include provisions for:

- a. establishment of meeting dates;
- b. establishment of an appointment to certain committees made up of Board Members and other lay persons to assist the Board in the conduct of its responsibilities;
- c. Board members' attendance requirements, not inconsistent with this Ordinance.

D. Duties and Responsibilities

1. The Board may:
 - a. hear and decide an appeal that alleges error in an order, requirement, decision or determination made by an administrative official in the enforcement of this ordinance or Section 211.007, Texas Local Government Code ("the Code") as it exists or may be amended.

In exercising the Board's authority herein, the Board may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination, and for that purpose the Board has the same authority as the administrative official; and

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- b. hear and decide special exceptions to the terms of a zoning ordinance when the ordinance requires the Board to do so; and
- c. permit the reconstruction, extension or enlargement of a building occupied by non-conforming uses, on the lot or tract occupied by such building, provided such reconstruction does not prevent the return of such property to a conforming use; and
- d. require the discontinuance of non-conforming uses of land or structure under any plan whereby the full value of the land or structure can be amortized within a definite period of time, taking into consideration the general character of the neighborhood and the necessity for all property to conform to the regulations of this Ordinance. All actions to discontinue a non-conforming use of land or structure shall be taken with due regard for the property rights of the persons affected when considered in the light of the public welfare and the character of the area surrounding the designated non-conforming uses and the conservation and preservation of property. The Board shall, from time to time, on its own motion, or upon cause presented by interested property owners, inquire into the existence, continuation, or maintenance of any non-conforming use within Frisco; and
- e. authorize, in specific cases, a variance of height, yard, area, exterior structure, lot coverage, off-street parking and loading requirements from the terms of a zoning ordinance, if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done. A variance shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss, nor shall it permit any person a privilege in developing a parcel of land not permitted by ordinance to other parcels of land in Frisco or the district. No variance may be granted if it results in an unnecessary hardship, as herein defined, on another parcel of land.

In order to make a finding of hardship and to grant a variance, the Board of Adjustment must determine that:

- i. the requested variance does not violate the intent of the Comprehensive Zoning Ordinance or its amendments;
- ii. special conditions of restricted area, shape, topography, or physical features exist that are peculiar to the subject parcel of land and are

not applicable to other parcels of land in the same zoning district;

- iii. the hardship is in no way the result of the applicant's own actions;
and
- iv. the interpretation of the provisions in the Comprehensive Zoning Ordinance or its amendments would deprive the applicant of rights commonly enjoyed by other properties, in the same zoning district, that comply with the same provisions.

No variance may authorize a use other than those uses permitted in the zoning district for which the variance is sought. Also, an application or request for a variance shall not be heard or granted with regard to any parcel of property or portion thereof upon which a Preliminary Site Plan, Site Plan, Preliminary Plat or Final Plat, when required by the Comprehensive Zoning Ordinance, and any amendments thereto, or the Subdivision Ordinance, and any amendments thereto, for any parcel of property or portion thereof, has not been finally acted upon by both the Planning & Zoning Commission and, where required, by the City Council.

The administrative procedures and requirements of the Comprehensive Zoning Ordinance, and any amendments thereto, and the Subdivision Ordinance, and any amendments thereto, with regard to both the Planning & Zoning Commission and City Council consideration and action, on Preliminary Site Plans, Site Plans, Preliminary Plats, and Final Plats, must be exhausted prior to requesting a variance.

- 2. The concurring vote of four (4) members of the Board is necessary to:
 - a. Reverse an order, requirement, decision, or determination of an administrative official;
 - b. Decide in favor of an applicant on a matter on which the Board is required to pass under a zoning ordinance; or
 - c. Authorize a variation from the terms of a zoning ordinance.

E. Appeal of Board Decision's

Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment, or any taxpayer, or any officer, department or board of the municipality, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within ten (10) days after the filing of the decision in the Office of the Board and not thereafter. The

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date of filing of the decision in the Office of the Board shall be the date the Board announces its decision either orally or in writing to the applicant.

F. Power to Obligate and Finance

The Board shall have no power to obligate Frisco in any manner whatsoever. The Board's finances shall be handled in the same manner as any division of the City Government.